

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35712]

BNSF Railway Company—Trackage Rights Exemption—Pemiscot County Port Authority

Pemiscot County Port Authority (PCPA) has agreed to grant local trackage rights to BNSF Railway Company (BNSF) over the rail line located between PCPA's connection with BNSF near BNSF milepost 212.22 at Hayti, Mo., and the Pemiscot Port Harbor, on the Mississippi River near Hayti, a distance of 4.9 miles.¹

The transaction is scheduled to be consummated after February 16, 2013, the effective date of the exemption (30 days after the exemption was filed).

The purpose of the transaction is to permit BNSF to provide common carrier service to all existing and future customers located on the 4.9-mile line of railroad.²

¹ BNSF states that it is currently negotiating a trackage rights agreement with PCPA, and that a copy of the agreement will be filed with the Board within 10 days of its execution.

² BNSF believes that a 2003 industry track agreement between BNSF and PCPA authorized BNSF to provide common and contract carrier operations over the 4.9-mile line that did not require prior Board approval. In Rail Switching Services, Inc.—Operation Exemption—Pemiscot County Port Authority, FD 35685 et al. (STB served Jan. 8, 2013), the Board advised BNSF to seek promptly any needed Board authority for its operations over the line to be in compliance with the Board's statute. BNSF states that, out of an abundance of caution and in light of the concerns expressed by the Board, it is filing this notice to acquire the trackage rights.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

This notice is filed under 49 C.F.R. § 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed by February 8, 2013 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35712, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 655 Fifteenth Street, N.W., Washington, DC 20005.

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Decided: January 28, 2013.

By the Board, Richard Armstrong, Acting Director, Office of Proceedings.